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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,612	03/11/2005	Gunter Richter	SC-05PCT	7216
40570	7590	09/17/2008		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			09/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,612

Applicant(s)

RICHTER, GUNTER

Examiner

HARRY A. GROSSO

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3 and 8-15 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 11 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 3/11/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I, claims 1-3 and 8-15, in the reply filed on July 29, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 4-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 12 recites the limitation of the container consisting of high-molecular high-density polyethylene. This limitation is not supported in the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 3, 9, 10, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 3 recites the limitation "the filling neck" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. The claim is dependent on claim 1 and no filling neck is defined on either container part in claim 1.
7. Claims 9 and 10 depend on claim 4, which has been withdrawn. It appears that claims 9 and 10 should depend on claim 8 and they will be read as such for the purposes of this action.
8. Claim 12 recites the limitation "high-molecular high density polyethylene". It is unclear what is intended by the limitation of "high-molecular" polyethylene.
9. Claim 13 recites the limitation "the same blowing mold" in line 3. There is insufficient antecedent basis for this limitation in the claim. This claim depends on claim 1 and claim 1 does not define a blowing mold.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 3, 8, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Spyra (3,405,862).
12. Regarding claim 1, Spyra discloses a plastic container consisting of two container parts (12, 14 Figures 1-7) with each part having a connection opening and a connection frame and the connection frames have vertical support devices (30,40) in the connection frame.

13. Regarding claim 3, the containers have substantially identical structure except for a filling neck (24).
14. Regarding claim 8, the support device includes a wall.
15. Regarding claim 13, Spyra discloses the container structure. The examiner considers the phrase "for manufacturing the container parts the same blowing mold is used into which, if necessary, a mold insert for creating a change in shape is inserted" to constitute a product by process limitation that does not materially affect structure.
16. Regarding claim 15, Spyra discloses the container has a square base.
17. Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kondo et al (4,527,709) (Kondo).
18. Regarding claim 1, Kondo discloses a container consisting of two plastic parts (11A, 11B, Figures 5-7) each part having a connection opening with a connection frame and each connection frame including a support device (12, 13) which extends vertically in the frame.
19. Regarding claim 2, Kondo discloses the connection frame has a circular shape with an outer diameter that approximately corresponds to the height of the container, the height being considered the dimension across the connection openings.
20. Regarding claim 3, Kondo discloses the two container parts have a substantially identical structure except for a filling neck on one end of the container.
21. Regarding claim 8, Kondo discloses the support device includes a wall.
22. Regarding claim 9, Kondo discloses the wall discloses vertically extending ribs (12a, 13a which extend in the vertical direction on the circumference of the wall).

23. Regarding claim 10, the wall has a cylindrical edge that is inserted into the frame (Figures 5 and 6) and in the welding of the connection frames, the welding seam also welds the edge of the wall into the connection frame at the outer edge of the ribs that are a part of the wall (Figure 7, column 3, lines 26-41).

24. Regarding claim 11, Kondo discloses the width of each container part is smaller than double the diameter of the respective connection frame.

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spyra or Kondo. Spyra and Kondo disclose the invention except for the capacity being 4000 to 6000 liters. It would have been an obvious matter of design choice to make the containers of Spyra or Kondo with a capacity of 4000 to 6000 liters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

27. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spyra in view of Yano et al (5,073,420) (Yano). Spyra discloses the container made from polyethylene (column 5, lines 12-14) but does not teach the use of high-molecular high-density polyethylene, as best understood. Yano discloses the use of high-molecular

weight resins in a similar container and further discloses the use of high-density polyethylene for the container (column 2, lines 50-52 and column 3, lines 14-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of high-molecular high-density polyethylene as disclosed by Yano in the container disclosed by Spyra because it is known in the art to utilize high-molecular high-density polyethylene for such containers and the process would be readily known.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARRY A. GROSSO whose telephone number is (571)272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harry A. Grosso
/Harry A. Grosso/
Primary Examiner, Art Unit 3781

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